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AUG - 6 2004

From: Charles R. Cypher  
Questions? Call (510) 832-4111  
Fax (510) 832-4115  
To: United States Patent Office  
Attn:  
File: United States Non-Provisional Application Number: 09/634,908  
Subject: Petition under 37 CFR 1.181  
Date: August 6, 2004  
Time: 2:09:20 PM  
Pages: 8 (including this one)

405 14th Street, Suite 1607  
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Fax No.: 1 703 872 9306

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To whom it may concern:

The enclosed petition document was originally submitted to the Patent Office on September 8, 2003 via express mail service. To date I have received no action with respect to this petition or the above-identified file - Application No.: 09/634,908.

I have contacted Examiner Varner of Group Art Unit 3635, telephone 703 308 1894, the examiner for this file, and he has instructed me to resend the petition by facsimile to the above-identified number.

Rather than resend the entire petition with its supporting documents, I am sending only the petition document itself. If the original petition cannot be found, I would be happy to send the entire petition with its supporting documents.

Kind regards,

Charles R. Cypher  
Attorney for Applicant

"Express Mail" mailing number

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Date of Deposit Sept 8 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

  
Charles R. Cypher, Reg. No. 41,694

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

## In re Patent Application of:

Inventor: Alex S. Toback  
Assignee: Simpson Simpson Strong-Tie Company  
Title: SELF-DRILLING, SELF-ANCHORING FASTENER FOR CONCRETE  
Serial No.: 09/634,908  
Filed: August 9, 2000  
Group Art: 3635  
Examiner: Steve Varner  
Docket No.: SST/1197

PROVISIONAL PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
(UNDER 37 C.F.R. § 1.181)PETITION TO ACCORD FILING DATE FOR EXPRESS MAIL CORRESPONDENCE  
NOT RECEIVED BY P.T.O. (UNDER 37 C.F.R. § 1.10(e))PETITION TO ACCORD FILING OF CORRESPONDENCE ACCOMPANIED BY  
CERTIFICATE OF MAILING (UNDER 37 C.F.R. § 1.8(b))

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

I hereby provisionally petition to withdraw any holding of abandonment that may have been imposed in this case. The fee for the petition under 37 CFR 1.181, as stated in 37 CFR 1.17(h) of \$130.00 is enclosed herewith.

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From conversations with the examiner, and from the portions of the record provided by the Examiner to Applicant on July 7, 2003, it is Applicant's understanding that the examiner considers there to be an outstanding office action that needs reply, and that this office action – Paper No. 4 – was mailed on September 11, 2001.

Applicant believes that any holding of abandonment imposed on this case would be improper as Applicant timely filed a Request for Continued Examination on March 11, 2002, with a request for extension and fee, so Applicant has responded to the Office Action mailed September 11, 2001.

According to Examiner Varner, an Advisory Action was mailed sometime after Applicant filed the Request for Continued Examination. Applicant cannot tell from the record provided to Applicant by Examiner Varner when the Advisory Action was mailed, but the Examiner has stated that it was filed on May 20, 2002.

Applicant, the new assignee of the application, did not receive this Advisory Action until July 7, 2003, when Examiner Varner kindly faxed it to Applicant's attorney. Applicant surmises that this Advisory Action was mailed to the inventor and original applicant for this file, although Applicant has no personal knowledge of this, as Applicant letter to the attorney for the original applicant has gone unanswered.

Applicant believes that an Advisory Action is an inappropriate communication following the timely filing of a Request for Continued Examination. Applicant surmises that Examiner Varner failed to recognize that Applicant had, in fact, filed a Request for Continued Examination.

Since an Advisory Action does not normally reset a date for response, Applicant files this petition in case the Patent Office has deemed the application abandoned for failing to respond to the Office Action of September 11, 2001.

Applicant respectfully requests that the Patent Office, on the basis of this petition, accept the Request for Continued Examination that was filed on March 11, 2002, and issue an office action in response thereto, resetting the time period for response, and that the Office send this communication to the attorney

**BL 967 947 524**

for the assignee of record, based on materials the new Applicant has previously and timely submitted, copies of which are enclosed herein.

**PETITION TO ACCORD FILING DATE FOR EXPRESS MAIL CORRESPONDENCE  
NOT RECEIVED BY P.T.O. (UNDER 37 C.F.R. § 1.10(e))**

This application should still be pending as a Requested for Continued Examination was filed on March 11, 2002. The Request for Continued Examination was mailed by the United States Postal's Express Mail Service on March 11, 2002. Applicant respectfully requests that the Patent Office determine that these materials were received on March 11, 2002.

Applicant only recently discovered that the RCE may not have been acknowledged as received, and this petition is being filed promptly thereafter. 37 C.F.R. § 1.10(e)(1). Applicant discovered that no new office action has been issued on the basis of Request for Continued Examination when Applicant received from Examiner Varner the Advisory Action – Paper No. 8 -- on July 7, 2003.

Applicant believes that this petition, if filed within two months of the discovery of the discrepancy should be considered as timely filed. Two months from July 7, 2003, is September 7, 2003, a Sunday. Applicant therefor believes that this petition can be filed on the next working day, Monday, September 8, 2003, and still be considered as timely filed.

In any event, no set deadline should be imposed on Applicant for filing this petition, as Applicant has received no notice that the file has in fact been abandoned. Furthermore, Applicant has made a number of attempts to communicate with Examiner Varner by phone in September, unfortunately, the schedules of Mr. Varner and of the attorney for Applicant have conflicted and so no communication was established.

The following attached papers are those required by 37 C.F.R. § 1.10(e):

1. A true copy of the originally-deposited papers and fees. These include the Request for Continued Examination, the submission and an information disclosure statement with references. Applicant is not enclosing the full references again to avoid redundancy in the

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file; however, Applicant is including the first page of each reference to show that at least this page had the Express Mail number thereon, and Applicant would be most happy to forward any references to the Office, if so requested. The copies show that the Express Mail label was indicated on each paper.

2. A true copy of the returned Post Card showing receipt of these papers by the P.T.O.
3. A copy of the canceled check showing the date for the fee payment by this correspondence.
4. A true copy of the "Express Mail" mailing label showing the "date-in."
5. A statement by Charles R. Cypher on the basis of personal knowledge that the correspondence was originally deposited with the United States Postal Service on March 11, 2003, and that the attached copies are true copies of that correspondence and the mailing label accurately reflects the date of the filing of the correspondence.

Also, I hereby state that the Examiner's Advisory Action -- Paper No. 8, that the examiner told Applicant was mailed on May 20, 2002, was not received by this Office until July 7, 2003, when Applicant requested it from Examiner Varner.

As evidence of non-receipt of the above Advisory Action, I also attach:

1. A copy of the docket record (schedule sheet) where the non-received Office Action would have been entered had it been received and docketed.
2. A true copy of a Status Inquiry filed on January 24, 2003, indicating that no further communication has been received from P.T.O. after filing the RCE on March 11, 2002.
3. A true copy of correspondence mailed to Guy D. Yale, Esq. Of ALIX, YALE & RITSTAS LLP on May 5, 2003, asking if they have received anything from the P.T.O. Mr. Yale is the attorney for the

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original applicant, this case having been assigned to the present Applicant.

4. A true copy of another Status Inquiry that was filed on May 8, 2003, again, indicating that no communication had been received by the P.T.O.
5. A copy of a memorandum dated June 23, 2003, showing a contact between one of our staff and Examiner Steve Varner.

Having contact with the Examiner on June 23, 2003, we were informed that the Examiner's Advisory Action was mailed to the former attorney of record on May 20, 2002.

This is the P.T.O's error because we submitted, on behalf of the Assignee, a Power of Attorney by Assignee of Entire Interest on April 11, 2002, revoking all powers of attorney previously given.

**PETITION TO ACCORD FILING OF CORRESPONDENCE ACCOMPANIED BY  
CERTIFICATE OF MAILING (UNDER 37 C.F.R. § 1.8(b))**

Applicant respectfully requests that the Patent Office recognize that the Power of Attorney mailed on April 11, 2002, was received on April 11, 2002, according to 37 CFR 1.8(b).

The following attached papers are those required by 37 C.F.R. § 1.8(b) :

1. A true copy of the originally-deposited papers and fees: the Power of Attorney By Assignee of Entire Interest mailed on April 11, 2002.
2. A true copy of the returned Post Card showing receipt of these papers by the P.T.O.
3. A statement by Charles Cypher based on personal knowledge that attests to the timely transmission of the materials.

Had the Patent Office considered these documents as timely filed and entered them into record, the Advisory Action, allegedly mailed on May 20, 2003, would have been sent to the new Applicant.

When Mhalue Dizon spoke with the examiner on June 30, 2003, the Examiner stated that he could not provide Applicant with any of the records of

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the file, unless Applicant could prove their ownership interest in the file and the right to control prosecution.

Mhalu Dizon, then faxed the requested documents (i.e. Power of Attorney, Statement Under 37 C.F.R. § 3.73(b), Assignment Document) to the Examiner, showing proof that this office has been given the right to receive correspondence from the P.T.O.

As evidence of this Applicant submits herewith:

1. A copy of this facsimile transmission dated June 23, 2003.

On July 7, 2003, Examiner Steve Varner sent us the Advisory Action via facsimile, and the other earlier Office Actions in the file. Therefore, we have just received the Advisory Action on July 7, 2003, and this petition is being filed within 2 months after receipt of the action.

Also, having seen the Advisory Action faxed by the Examiner on July 7, 2003, it is Applicant's belief that the Request for Continued Examination mailed on March 11, 2002, was not acknowledged.

It is my assumption that the above application has been or would have been abandoned due to P.T.O's failure to acknowledge receipt of the Request for Continued Examination mailed on March 11, 2002.

In consideration of these submissions and explanations, it is respectfully requested that any holding of abandonment be withdrawn, and that the application proceed to examination on the basis of the Request for Continued Examination filed on March 11, 2002.

I, Charles R. Cypher, having been duly warned that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document or the instant application, I hereby declare that I am authorized to execute this document; that the facts set forth herein are true; that all statements made of my own knowledge are true; and that all statements made on information and belief are believed to be true.

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Date: September 8, 2003

Signature:



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